

**Bills Committee on
Buildings (Amendment) Bill 2003**

Fines

Purpose

This paper describes the proposals under the Buildings (Amendment) Bill 2003 to adjust the fines of selected offences in connection with unauthorized building works (UBW), substandard building works and construction danger.

Background

2. Each year, the Buildings Department (BD) prosecutes over 400 cases of contraventions of the Buildings Ordinance (BO), of which over 90% are UBW-related offences. The others are concerned with substandard building works or construction danger. In view of the risks to public safety involved, it is necessary to ensure that the penalties for these offences continue to have a sufficient deterrent effect.

3. Under section 40(1) of the BO, the maximum penalty for carrying out UBW is a fine of \$100,000 and imprisonment for 2 years. Non-compliance with a removal order issued under section 24(1) attracts a maximum fine of \$50,000 and one-year imprisonment under section 40(1B)(b). These penalties were last revised in 1979. While the imprisonment terms remain appropriate, the deterrent effect of the fines has been considerably eroded. Given the significant gains from UBW (e.g. extra floor space for rent, increase in value for sale, etc.) and the relatively modest building costs, it is necessary to adjust the fines in order to arrest the proliferation of UBW.

4. Offences relating to substandard building works or construction

danger are provided under sections 40(2A), (2AA), (2AB), (2AC), (2B) and (2C) of the BO. (Please see the Annex for a fuller description of the respective offences.) They carry a maximum penalty of a fine of \$250,000 and 3-year imprisonment, except for section 40(2AB) for which the penalty is only \$50,000 and one-year imprisonment. Again, these penalties have not been revised for some 20 years. While the imprisonment terms remain appropriate, the fines have become inadequate with the passage of time. Indeed, in January 2000, when passing sentence on a registered contractor under section 40(2A) for irregularities in foundation works, a magistrate imposed the maximum fine of \$250,000 and commented that the maximum fine should be raised to \$5 million to reflect the gravity of such an offence.

Proposal

5. The Bill (Clause 39) seeks to reinstate the deterrent effect of the fines. The increases range from four to six times. The details are set out in the table at the Annex.

6. In computing the appropriate level of fines for these offences, reference has been made to the Building Cost Index (BCI). The index is prepared by the Architectural Services Department and is widely accepted by the building industry as an objective measure to track changes in construction cost. From 1981 when the present fines for offences under sections 40(2AB) and 40(2AC) were introduced until April 2003, the BCI has increased by 440%. From 1979 when the fines for the other offences were introduced, the BCI has increased by 610%.

7. The revised fines mainly reflect these changes. The only exception is the proposed fine for failure to take measures to prevent the collapse of foundation works, piling works etc (section 40(2AC)). Although the last revision of the fine took place in 1981 and the construction cost has increased by four times since, we propose to increase the fine by six times so as to bring it up to the same level for offences that are comparable in gravity and likely consequences, e.g. using defective materials in construction and failure to comply with an order to cease or remedy dangerous works.

Relativity

8. Some deputations have queried whether the existing offence under section 40(2AA) of the BO for failure to notify the Building Authority (BA) of the contravention of building regulations resulting from the carrying out of building works shown on approved plans should be regarded as a serious one. They have argued that it might be inequitable to revise the maximum fine for the offence to \$1,500,000. They have contrasted this with the offence under section 40(1AA) for carrying out building works without obtaining the BA's prior approval and consent, which would attract a maximum fine of \$600,000.

9. The "inequity" is more apparent than real. First, the offence under section 40(2AA) applies to authorized persons (AP), registered structural engineers (RSE) and registered contractors (RC) registered under the BO. They have the professional expertise and responsibility for ensuring compliance with the BO. On the other hand, the provision under section 40(1AA) applies to any person, including an ordinary owner. The threshold and hence the penalty for this offence should accordingly be lower. Second, if the AP/RSE/RC knows that the building works under his purview have been carried out in contravention of the BO and yet does not notify the BA, the conduct is arguably comparable to a misrepresentation under section 40(2A)(c). Therefore, section 40(2AA) should also attract a maximum fine of \$1,500,000 as that proposed under section 40(2A)(c).

10. At the Bills Committee meeting held on 23 September 2003, Members asked the Administration to consider whether it would be appropriate for offences in relation to minor works and those of a serious nature to attract the same level of fines and imprisonment terms. We believe that the court will consider the circumstances of each case before meting out the penalty within the upper limits set by the law. The factors to be taken into account will include the scale and nature of the works as well as the seriousness and consequences of the contravention. Given the nature of minor works, the penalty to be imposed by the court is expected to be generally lower than that for the contravention of the same offence in relation to larger-scale building works. Nevertheless, in view

of Members' concern, we are now examining the feasibility of providing for separate penalties for offences relating to minor works.

Comparison with other offences

11. As requested by the Bills Committee at its meeting on 23 September 2003, we set out below the penalty level for some offences under other ordinances for Members' reference.

- Under the Town Planning Ordinance (Cap. 131), a maximum fine of \$500,000 on first conviction and of \$1,000,000 on each subsequent conviction may be imposed for the following offences –
 - (a) undertaking or continuing a development not permitted under a plan of a development permission area (section 21(2)); and
 - (b) failure to comply with a notice to discontinue unauthorized development (section 23(6)).
- Under section 26 of the Environmental Impact Assessment Ordinance (Cap. 499), contravention of the conditions of an environmental permit shall be liable on a first conviction to a maximum fine of \$2,000,000 and an imprisonment term of 6 months.
- Under the Dangerous Drugs Ordinance (Cap. 134), a maximum fine of \$5,000,000 on indictment may be imposed for the following offences –
 - (a) a person trafficking in a dangerous drug (section 4);
 - (b) a person manufacturing a dangerous drug (section 6); and
 - (c) an owner, tenant, occupier or person permitting his premises to be used for the unlawful trafficking, manufacturing or storage of a dangerous drug (section 37).

(The imprisonment terms are life for (a) and (b), and 15 years for (c).)

12. As different offences cater for different situations and were

created at different times, it is difficult to draw a simple and direct comparison among them. However, we would like to stress that, given the risk to safety involved in most building works related offences, a sufficient deterrent is required.

Conclusion

13. We believe that the proposed fine levels will restore the deterrent effect against UBW and irregularities in new building works, thereby enhancing the safety of building works and buildings. As regards the review of the penalty levels for offences relating to minor works referred to in paragraph 10 above, we will report to the Bills Committee of the results when the review is completed.

Housing, Planning and Lands Bureau
October 2003

**Proposed Increases in Fines for Offences under the
Buildings (Amendment) Bill 2003**

No.	Provision under BO	Brief description of offence	Existing fines	Proposed fines	Percentage Increase	BCI Increase since last revision
1	Section 40(1) & new section 40(1AA)	Any person who contravenes section 14(1) in relation to commencement or carrying out building works without first obtaining the approval and consent from the Building Authority (BA).	Maximum fine of \$100,000 and a daily fine of \$5,000 for offence continued	Maximum fine and daily fine are proposed to be \$600,000 and \$30,000 respectively in new section 40(1AA).	600%	610%
2	Section 40(1B)(b) & new section 40(1BA)	Any person who, without reasonable excuse, fails to comply with orders issued under section 24(1) for the demolition or alteration of building works to comply with the provisions of BO.	Maximum fine of \$50,000 and a daily fine of \$5,000 for offence continued	Maximum fine and daily fine are proposed to be \$300,000 and \$30,000 respectively in new section 40(1BA).	600%	610%
3	Section 40(2A)	Any person and any Authorised Person (AP), Registered Structural Engineer (RSE), Registered General Building Contractor (RGBC), or Registered Specialist Contractor (RSC) who permits the use of defective material, etc.; or diverges or deviates in a material way from any work shown in an approved plan, or knowingly misrepresents a	Maximum fine of \$250,000.	Maximum fine is proposed to be \$1,500,000.	600%	610%

No.	Provision under BO	Brief description of offence	Existing fines	Proposed fines	Percentage Increase	BCI Increase since last revision
		material fact in plan, certificate, form, etc.				
4	Section 40(2AA)	Any AP, RSE who contravenes section 4(3)(b) or new section 4(3A)(b); or any RGBC or RSC who contravenes section 9(5)(b), (6)(b) or new section 9(6A)(b) in failure to notify BA of any contravention of the regulation resulting from carrying out of building works according to approved plans.	Maximum fine of \$250,000.	Maximum fine is proposed to be \$1,500,000.	600%	610%
5	Section 40(2AB)	Any person who contravenes any condition imposed, or fails to comply with the requirement of order issued under s.17(1) in respect of building works other than those listed in s.40(2AC) below.	Maximum fine of \$50,000.	Maximum fine is proposed to be \$200,000.	400%	440%
6	Section 40(2AC)	Any person in relation to site formation works, piling works, excavation works or foundation works who fails to comply with the condition imposed under section 17(1) in respect of measures to prevent collapse.	Maximum fine of \$250,000.	Maximum fine is proposed to be \$1,500,000.	600%	440%
7	Section 40(2B)	Any person who carries out or permits	Maximum fine of	Maximum fine is proposed	600%	610%

No.	Provision under BO	Brief description of offence	Existing fines	Proposed fines	Percentage Increase	BCI Increase since last revision
		the carrying out of building works in such manner that it causes or is likely to cause injury to any person or damage to any property.	\$250,000.	to be \$1,500,000.		
8	BO s.40(2C)	Any person, without reasonable excuse, fails to comply with an order served on him under section 24A to cease or remedy dangerous works.	Maximum fine of \$250,000 and a daily fine of \$50,000 for offence continued.	Maximum fine and daily fine are proposed to be \$1,500,000 and \$300,000 respectively.	600%	610%